



# Senate

## File No. 904

General Assembly

January Session, 2015

**(Reprint of File No. 696)**

Senate Bill No. 796  
As Amended by Senate Amendment  
Schedule "A" and House Amendment  
Schedule "A"

Approved by the Legislative Commissioner  
May 27, 2015

**AN ACT CONCERNING LENGTHY SENTENCES FOR CRIMES  
COMMITTED BY A CHILD OR YOUTH AND THE SENTENCING OF A  
CHILD OR YOUTH CONVICTED OF CERTAIN FELONY OFFENSES.**

Be it enacted by the Senate and House of Representatives in General  
Assembly convened:

1 Section 1. Section 54-125a of the general statutes is repealed and the  
2 following is substituted in lieu thereof (*Effective October 1, 2015*):

3 (a) A person convicted of one or more crimes who is incarcerated on  
4 or after October 1, 1990, who received a definite sentence or  
5 [aggregate] total effective sentence of more than two years, and who  
6 has been confined under such sentence or sentences for not less than  
7 one-half of the [aggregate] total effective sentence less any risk  
8 reduction credit earned under the provisions of section 18-98e or one-  
9 half of the most recent sentence imposed by the court less any risk  
10 reduction credit earned under the provisions of section 18-98e,  
11 whichever is greater, may be allowed to go at large on parole in the  
12 discretion of the panel of the Board of Pardons and Paroles for the  
13 institution in which the person is confined, if (1) it appears from all

14 available information, including any reports from the Commissioner of  
15 Correction that the panel may require, that there is a reasonable  
16 probability that such inmate will live and remain at liberty without  
17 violating the law, and (2) such release is not incompatible with the  
18 welfare of society. At the discretion of the panel, and under the terms  
19 and conditions as may be prescribed by the panel including requiring  
20 the parolee to submit personal reports, the parolee shall be allowed to  
21 return to the parolee's home or to reside in a residential community  
22 center, or to go elsewhere. The parolee shall, while on parole, remain  
23 under the jurisdiction of the board until the expiration of the  
24 maximum term or terms for which the parolee was sentenced less any  
25 risk reduction credit earned under the provisions of section 18-98e.  
26 Any parolee released on the condition that the parolee reside in a  
27 residential community center may be required to contribute to the cost  
28 incidental to such residence. Each order of parole shall fix the limits of  
29 the parolee's residence, which may be changed in the discretion of the  
30 board and the Commissioner of Correction. Within three weeks after  
31 the commitment of each person sentenced to more than two years, the  
32 state's attorney for the judicial district shall send to the Board of  
33 Pardons and Paroles the record, if any, of such person.

34 (b) (1) No person convicted of any of the following offenses, which  
35 was committed on or after July 1, 1981, shall be eligible for parole  
36 under subsection (a) of this section: (A) Capital felony, as provided  
37 under the provisions of section 53a-54b, as amended by this act, in  
38 effect prior to April 25, 2012, (B) murder with special circumstances, as  
39 provided under the provisions of section 53a-54b, as amended by this  
40 act, in effect on or after April 25, 2012, (C) felony murder, as provided  
41 in section 53a-54c, (D) arson murder, as provided in section 53a-54d, as  
42 amended by this act, (E) murder, as provided in section 53a-54a, as  
43 amended by this act, or (F) aggravated sexual assault in the first  
44 degree, as provided in section 53a-70a. (2) A person convicted of (A) a  
45 violation of section 53a-100aa or 53a-102, or (B) an offense, other than  
46 an offense specified in subdivision (1) of this subsection, where the  
47 underlying facts and circumstances of the offense involve the use,

48 attempted use or threatened use of physical force against another  
49 person shall be ineligible for parole under subsection (a) of this section  
50 until such person has served not less than eighty-five per cent of the  
51 definite sentence imposed.

52 (c) The Board of Pardons and Paroles shall, not later than July 1,  
53 1996, adopt regulations in accordance with chapter 54 to ensure that a  
54 person convicted of an offense described in subdivision (2) of  
55 subsection (b) of this section is not released on parole until such person  
56 has served eighty-five per cent of the definite sentence imposed by the  
57 court. Such regulations shall include guidelines and procedures for  
58 classifying a person as a violent offender that are not limited to a  
59 consideration of the elements of the offense or offenses for which such  
60 person was convicted.

61 (d) The Board of Pardons and Paroles may hold a hearing to  
62 determine the suitability for parole release of any person whose  
63 eligibility for parole release is not subject to the provisions of  
64 subsection (b) of this section upon completion by such person of  
65 seventy-five per cent of such person's definite or [aggregate] total  
66 effective sentence less any risk reduction credit earned under the  
67 provisions of section 18-98e. An employee of the board or, if deemed  
68 necessary by the chairperson, a panel of the board shall assess the  
69 suitability for parole release of such person based on the following  
70 standards: (1) Whether there is reasonable probability that such person  
71 will live and remain at liberty without violating the law, and (2)  
72 whether the benefits to such person and society that would result from  
73 such person's release to community supervision substantially  
74 outweigh the benefits to such person and society that would result  
75 from such person's continued incarceration. If a hearing is held, and if  
76 the board determines that continued confinement is necessary, the  
77 board shall articulate for the record the specific reasons why such  
78 person and the public would not benefit from such person serving a  
79 period of parole supervision while transitioning from incarceration to  
80 the community. If a hearing is not held, the board shall document the  
81 specific reasons for not holding a hearing and provide such reasons to

82 such person. No person shall be released on parole without receiving a  
83 hearing. The decision of the board under this subsection shall not be  
84 subject to appeal.

85 (e) The Board of Pardons and Paroles may hold a hearing to  
86 determine the suitability for parole release of any person whose  
87 eligibility for parole release is subject to the provisions of subdivision  
88 (2) of subsection (b) of this section upon completion by such person of  
89 eighty-five per cent of such person's definite or [aggregate] total  
90 effective sentence. An employee of the board or, if deemed necessary  
91 by the chairperson, a panel of the board shall assess the suitability for  
92 parole release of such person based on the following standards: (1)  
93 Whether there is a reasonable probability that such person will live  
94 and remain at liberty without violating the law, and (2) whether the  
95 benefits to such person and society that would result from such  
96 person's release to community supervision substantially outweigh the  
97 benefits to such person and society that would result from such  
98 person's continued incarceration. If a hearing is held, and if the board  
99 determines that continued confinement is necessary, the board shall  
100 articulate for the record the specific reasons why such person and the  
101 public would not benefit from such person serving a period of parole  
102 supervision while transitioning from incarceration to the community.  
103 If a hearing is not held, the board shall document the specific reasons  
104 for not holding a hearing and provide such reasons to such person. No  
105 person shall be released on parole without receiving a hearing. The  
106 decision of the board under this subsection shall not be subject to  
107 appeal.

108 (f) (1) Notwithstanding the provisions of subsections (a) to (e),  
109 inclusive, of this section, a person convicted of one or more crimes  
110 committed while such person was under eighteen years of age, who is  
111 incarcerated on or after October 1, 2015, and who received a definite  
112 sentence or total effective sentence of more than ten years for such  
113 crime or crimes prior to, on or after October 1, 2015, may be allowed to  
114 go at large on parole in the discretion of the panel of the Board of  
115 Pardons and Paroles for the institution in which such person is

116 confined, provided (A) if such person is serving a sentence of fifty  
117 years or less, such person shall be eligible for parole after serving sixty  
118 per cent of the sentence or twelve years, whichever is greater, or (B) if  
119 such person is serving a sentence of more than fifty years, such person  
120 shall be eligible for parole after serving thirty years. Nothing in this  
121 subsection shall limit a person's eligibility for parole release under the  
122 provisions of subsections (a) to (e), inclusive, of this section if such  
123 person would be eligible for parole release at an earlier date under any  
124 of such provisions.

125 (2) The board shall apply the parole eligibility rules of this  
126 subsection only with respect to the sentence for a crime or crimes  
127 committed while a person was under eighteen years of age. Any  
128 portion of a sentence that is based on a crime or crimes committed  
129 while a person was eighteen years of age or older shall be subject to  
130 the applicable parole eligibility, suitability and release rules set forth in  
131 subsections (a) to (e), inclusive, of this section.

132 (3) Whenever a person becomes eligible for parole release pursuant  
133 to this subsection, the board shall hold a hearing to determine such  
134 person's suitability for parole release. At least twelve months prior to  
135 such hearing, the board shall notify the office of Chief Public Defender,  
136 the appropriate state's attorney, the Victim Services Unit within the  
137 Department of Correction, the Office of the Victim Advocate and the  
138 Office of Victim Services within the Judicial Department of such  
139 person's eligibility for parole release pursuant to this subsection. The  
140 office of Chief Public Defender shall assign counsel for such person  
141 pursuant to section 51-296 if such person is indigent. At any hearing to  
142 determine such person's suitability for parole release pursuant to this  
143 subsection, the board shall permit (A) such person to make a statement  
144 on such person's behalf, (B) counsel for such person and the state's  
145 attorney to submit reports and other documents, and (C) any victim of  
146 the crime or crimes to make a statement pursuant to section 54-126a.  
147 The board may request testimony from mental health professionals or  
148 other relevant witnesses, and reports from the Commissioner of  
149 Correction or other persons, as the board may require. The board shall

150 use validated risk assessment and needs assessment tools and its risk-  
151 based structured decision making and release criteria established  
152 pursuant to subsection (d) of section 54-124a in making a  
153 determination pursuant to this subsection.

154 (4) After such hearing, the board may allow such person to go at  
155 large on parole with respect to any portion of a sentence that was  
156 based on a crime or crimes committed while such person was under  
157 eighteen years of age if the board finds that such parole release would  
158 be consistent with the factors set forth in subdivisions (1) to (4),  
159 inclusive, of subsection (c) of section 54-300 and if it appears, from all  
160 available information, including, but not limited to, any reports from  
161 the Commissioner of Correction, that (A) there is a reasonable  
162 probability that such person will live and remain at liberty without  
163 violating the law, (B) the benefits to such person and society that  
164 would result from such person's release to community supervision  
165 substantially outweigh the benefits to such person and society that  
166 would result from such person's continued incarceration, and (C) such  
167 person has demonstrated substantial rehabilitation since the date such  
168 crime or crimes were committed considering such person's character,  
169 background and history, as demonstrated by factors, including, but  
170 not limited to, such person's correctional record, the age and  
171 circumstances of such person as of the date of the commission of the  
172 crime or crimes, whether such person has demonstrated remorse and  
173 increased maturity since the date of the commission of the crime or  
174 crimes, such person's contributions to the welfare of other persons  
175 through service, such person's efforts to overcome substance abuse,  
176 addiction, trauma, lack of education or obstacles that such person may  
177 have faced as a child or youth in the adult correctional system, the  
178 opportunities for rehabilitation in the adult correctional system and the  
179 overall degree of such person's rehabilitation considering the nature  
180 and circumstances of the crime or crimes.

181 (5) After such hearing, the board shall articulate for the record its  
182 decision and the reasons for its decision. If the board determines that  
183 continued confinement is necessary, the board may reassess such

184 person's suitability for a new parole hearing at a later date to be  
185 determined at the discretion of the board, but not earlier than two  
186 years after the date of its decision.

187 (6) The decision of the board under this subsection shall not be  
188 subject to appeal.

189 [(f)] (g) Any person released on parole under this section shall  
190 remain in the custody of the Commissioner of Correction and be  
191 subject to supervision by personnel of the Department of Correction  
192 during such person's period of parole.

193 Sec. 2. (NEW) (*Effective October 1, 2015*) (a) If the case of a child, as  
194 defined in section 46b-120 of the general statutes, is transferred to the  
195 regular criminal docket of the Superior Court pursuant to section 46b-  
196 127 of the general statutes, as amended by this act, and the child is  
197 convicted of a class A or B felony pursuant to such transfer, at the time  
198 of sentencing, the court shall:

199 (1) Consider, in addition to any other information relevant to  
200 sentencing, the defendant's age at the time of the offense, the hallmark  
201 features of adolescence, and any scientific and psychological evidence  
202 showing the differences between a child's brain development and an  
203 adult's brain development; and

204 (2) Consider, if the court proposes to sentence the child to a lengthy  
205 sentence under which it is likely that the child will die while  
206 incarcerated, how the scientific and psychological evidence described  
207 in subdivision (1) of this subsection counsels against such a sentence.

208 (b) Notwithstanding the provisions of section 54-91a of the general  
209 statutes, no presentence investigation or report may be waived with  
210 respect to a child convicted of a class A or B felony. Any presentence  
211 report prepared with respect to a child convicted of a class A or B  
212 felony shall address the factors set forth in subparagraphs (A) to (D),  
213 inclusive, of subdivision (1) of subsection (a) of this section.

214 (c) Whenever a child is sentenced pursuant to subsection (a) of this  
215 section, the court shall indicate the maximum period of incarceration  
216 that may apply to the child and whether the child may be eligible to  
217 apply for release on parole pursuant to subdivision (1) of subsection (f)  
218 of section 54-125a of the general statutes, as amended by this act.

219 (d) The Court Support Services Division of the Judicial Branch shall  
220 compile reference materials relating to adolescent psychological and  
221 brain development to assist courts in sentencing children pursuant to  
222 this section.

223 Sec. 3. Subsection (c) of section 46b-127 of the general statutes is  
224 repealed and the following is substituted in lieu thereof (*Effective*  
225 *October 1, 2015*):

226 (c) Upon the effectuation of the transfer, such child shall stand trial  
227 and be sentenced, if convicted, as if such child were eighteen years of  
228 age, subject to the provisions of section 2 of this act. Such child shall  
229 receive credit against any sentence imposed for time served in a  
230 juvenile facility prior to the effectuation of the transfer. A child who  
231 has been transferred may enter a guilty plea to a lesser offense if the  
232 court finds that such plea is made knowingly and voluntarily. Any  
233 child transferred to the regular criminal docket who pleads guilty to a  
234 lesser offense shall not resume such child's status as a juvenile  
235 regarding such offense. If the action is dismissed or nolleed or if such  
236 child is found not guilty of the charge for which such child was  
237 transferred or of any lesser included offenses, the child shall resume  
238 such child's status as a juvenile until such child attains the age of  
239 eighteen years.

240 Sec. 4. Subsection (f) of section 46b-133c of the general statutes is  
241 repealed and the following is substituted in lieu thereof (*Effective*  
242 *October 1, 2015*):

243 (f) Whenever a proceeding has been designated a serious juvenile  
244 repeat offender prosecution pursuant to subsection (b) of this section  
245 and the child does not waive such child's right to a trial by jury, the



246 court shall transfer the case from the docket for juvenile matters to the  
247 regular criminal docket of the Superior Court. Upon transfer, such  
248 child shall stand trial and be sentenced, if convicted, as if such child  
249 were eighteen years of age, subject to the provisions of section 2 of this  
250 act, except that no such child shall be placed in a correctional facility  
251 but shall be maintained in a facility for children and youths until such  
252 child attains eighteen years of age or until such child is sentenced,  
253 whichever occurs first. Such child shall receive credit against any  
254 sentence imposed for time served in a juvenile facility prior to the  
255 effectuation of the transfer. A child who has been transferred may  
256 enter a guilty plea to a lesser offense if the court finds that such plea is  
257 made knowingly and voluntarily. Any child transferred to the regular  
258 criminal docket who pleads guilty to a lesser offense shall not resume  
259 such child's status as a juvenile regarding such offense. If the action is  
260 dismissed or nolle or if such child is found not guilty of the charge for  
261 which such child was transferred, the child shall resume such child's  
262 status as a juvenile until such child attains eighteen years of age.

263 Sec. 5. Subsection (f) of section 46b-133d of the general statutes is  
264 repealed and the following is substituted in lieu thereof (*Effective*  
265 *October 1, 2015*):

266 (f) When a proceeding has been designated a serious sexual  
267 offender prosecution pursuant to subsection (c) of this section and the  
268 child does not waive the right to a trial by jury, the court shall transfer  
269 the case from the docket for juvenile matters to the regular criminal  
270 docket of the Superior Court. Upon transfer, such child shall stand trial  
271 and be sentenced, if convicted, as if such child were eighteen years of  
272 age, subject to the provisions of section 2 of this act, except that no  
273 such child shall be placed in a correctional facility but shall be  
274 maintained in a facility for children and youths until such child attains  
275 eighteen years of age or until such child is sentenced, whichever occurs  
276 first. Such child shall receive credit against any sentence imposed for  
277 time served in a juvenile facility prior to the effectuation of the  
278 transfer. A child who has been transferred may enter a guilty plea to a  
279 lesser offense if the court finds that such plea is made knowingly and

280 voluntarily. Any child transferred to the regular criminal docket who  
281 pleads guilty to a lesser offense shall not resume such child's status as  
282 a juvenile regarding such offense. If the action is dismissed or nolleed or  
283 if such child is found not guilty of the charge for which such child was  
284 transferred, the child shall resume such child's status as a juvenile until  
285 such child attains eighteen years of age.

286 Sec. 6. Section 53a-46a of the general statutes is repealed and the  
287 following is substituted in lieu thereof (*Effective October 1, 2015, and*  
288 *applicable to any person convicted prior to, on or after said date*):

289 (a) A person shall be subjected to the penalty of death for a capital  
290 felony committed prior to April 25, 2012, under the provisions of  
291 section 53a-54b, as amended by this act, in effect prior to April 25,  
292 2012, only if (1) a hearing is held in accordance with the provisions of  
293 this section, and (2) such person was eighteen years of age or older at  
294 the time the offense was committed.

295 (b) For the purpose of determining the sentence to be imposed when  
296 a defendant is convicted of or pleads guilty to a capital felony, the  
297 judge or judges who presided at the trial or before whom the guilty  
298 plea was entered shall conduct a separate hearing to determine the  
299 existence of any mitigating factor concerning the defendant's character,  
300 background and history, or the nature and circumstances of the crime,  
301 and any aggravating factor set forth in subsection (i) of this section.  
302 Such hearing shall not be held if the state stipulates that none of the  
303 aggravating factors set forth in subsection (i) of this section exists or  
304 that any factor set forth in subsection (h) of this section exists. Such  
305 hearing shall be conducted (1) before the jury [which] that determined  
306 the defendant's guilt, or (2) before a jury impaneled for the purpose of  
307 such hearing if (A) the defendant was convicted upon a plea of guilty;  
308 (B) the defendant was convicted after a trial before three judges as  
309 provided in subsection (b) of section 53a-45; or (C) if the jury [which]  
310 that determined the defendant's guilt has been discharged by the court  
311 for good cause, or (3) before the court, on motion of the defendant and  
312 with the approval of the court and the consent of the state.

313 (c) In such hearing the court shall disclose to the defendant or his  
314 counsel all material contained in any presentence report [which] that  
315 may have been prepared. No presentence information withheld from  
316 the defendant shall be considered in determining the existence of any  
317 mitigating or aggravating factor. Any information relevant to any  
318 mitigating factor may be presented by either the state or the defendant,  
319 regardless of its admissibility under the rules governing admission of  
320 evidence in trials of criminal matters, but the admissibility of  
321 information relevant to any of the aggravating factors set forth in  
322 subsection (i) of this section shall be governed by the rules governing  
323 the admission of evidence in such trials. The state and the defendant  
324 shall be permitted to rebut any information received at the hearing and  
325 shall be given fair opportunity to present argument as to the adequacy  
326 of the information to establish the existence of any mitigating or  
327 aggravating factor. The burden of establishing any of the aggravating  
328 factors set forth in subsection (i) of this section shall be on the state.  
329 The burden of establishing any mitigating factor shall be on the  
330 defendant.

331 (d) In determining whether a mitigating factor exists concerning the  
332 defendant's character, background or history, or the nature and  
333 circumstances of the crime, pursuant to subsection (b) of this section,  
334 the jury or, if there is no jury, the court shall first determine whether a  
335 particular factor concerning the defendant's character, background or  
336 history, or the nature and circumstances of the crime, has been  
337 established by the evidence, and shall determine further whether that  
338 factor is mitigating in nature, considering all the facts and  
339 circumstances of the case. Mitigating factors are such as do not  
340 constitute a defense or excuse for the capital felony of which the  
341 defendant has been convicted, but which, in fairness and mercy, may  
342 be considered as tending either to extenuate or reduce the degree of his  
343 culpability or blame for the offense or to otherwise constitute a basis  
344 for a sentence less than death.

345 (e) The jury or, if there is no jury, the court shall return a special  
346 verdict setting forth its findings as to the existence of any factor set

347 forth in subsection (h) of this section, the existence of any aggravating  
348 factor or factors set forth in subsection (i) of this section and whether  
349 any aggravating factor or factors outweigh any mitigating factor or  
350 factors found to exist pursuant to subsection (d) of this section.

351 (f) If the jury or, if there is no jury, the court finds that (1) none of  
352 the factors set forth in subsection (h) of this section exist, (2) one or  
353 more of the aggravating factors set forth in subsection (i) of this section  
354 exist and (3) (A) no mitigating factor exists or (B) one or more  
355 mitigating factors exist but are outweighed by one or more  
356 aggravating factors set forth in subsection (i) of this section, the court  
357 shall sentence the defendant to death.

358 (g) If the jury or, if there is no jury, the court finds that (1) any of the  
359 factors set forth in subsection (h) of this section exist, or (2) none of the  
360 aggravating factors set forth in subsection (i) of this section exists, or  
361 (3) one or more of the aggravating factors set forth in subsection (i) of  
362 this section exist and one or more mitigating factors exist, but the one  
363 or more aggravating factors set forth in subsection (i) of this section do  
364 not outweigh the one or more mitigating factors, the court shall impose  
365 a sentence of life imprisonment without the possibility of release.

366 (h) The court shall not impose the sentence of death on the  
367 defendant if the jury or, if there is no jury, the court finds by a special  
368 verdict, as provided in subsection (e) of this section, that at the time of  
369 the offense (1) the defendant was [under the age of eighteen years, or  
370 (2) the defendant was] a person with intellectual disability, as defined  
371 in section 1-1g, or [(3)] (2) the defendant's mental capacity was  
372 significantly impaired or the defendant's ability to conform the  
373 defendant's conduct to the requirements of law was significantly  
374 impaired but not so impaired in either case as to constitute a defense to  
375 prosecution, or [(4)] (3) the defendant was criminally liable under  
376 sections 53a-8, 53a-9 and 53a-10 for the offense, which was committed  
377 by another, but the defendant's participation in such offense was  
378 relatively minor, although not so minor as to constitute a defense to  
379 prosecution, or [(5)] (4) the defendant could not reasonably have

380 foreseen that the defendant's conduct in the course of commission of  
381 the offense of which the defendant was convicted would cause, or  
382 would create a grave risk of causing, death to another person.

383 (i) The aggravating factors to be considered shall be limited to the  
384 following: (1) The defendant committed the offense during the  
385 commission or attempted commission of, or during the immediate  
386 flight from the commission or attempted commission of, a felony and  
387 the defendant had previously been convicted of the same felony; or (2)  
388 the defendant committed the offense after having been convicted of  
389 two or more state offenses or two or more federal offenses or of one or  
390 more state offenses and one or more federal offenses for each of which  
391 a penalty of more than one year imprisonment may be imposed, which  
392 offenses were committed on different occasions and which involved  
393 the infliction of serious bodily injury upon another person; or (3) the  
394 defendant committed the offense and in such commission knowingly  
395 created a grave risk of death to another person in addition to the  
396 victim of the offense; or (4) the defendant committed the offense in an  
397 especially heinous, cruel or depraved manner; or (5) the defendant  
398 procured the commission of the offense by payment, or promise of  
399 payment, of anything of pecuniary value; or (6) the defendant  
400 committed the offense as consideration for the receipt, or in  
401 expectation of the receipt, of anything of pecuniary value; or (7) the  
402 defendant committed the offense with an assault weapon, as defined  
403 in section 53-202a; or (8) the defendant committed the offense set forth  
404 in subdivision (1) of section 53a-54b, as amended by this act, to avoid  
405 arrest for a criminal act or prevent detection of a criminal act or to  
406 hamper or prevent the victim from carrying out any act within the  
407 scope of the victim's official duties or to retaliate against the victim for  
408 the performance of the victim's official duties.

409 Sec. 7. Section 53a-54b of the general statutes is repealed and the  
410 following is substituted in lieu thereof (*Effective October 1, 2015, and*  
411 *applicable to any person convicted prior to, on or after said date*):

412 A person is guilty of murder with special circumstances who is

413 convicted of any of the following and was eighteen years of age or  
414 older at the time of the offense: (1) Murder of a member of the Division  
415 of State Police within the Department of Emergency Services and  
416 Public Protection or of any local police department, a chief inspector or  
417 inspector in the Division of Criminal Justice, a state marshal who is  
418 exercising authority granted under any provision of the general  
419 statutes, a judicial marshal in performance of the duties of a judicial  
420 marshal, a constable who performs criminal law enforcement duties, a  
421 special policeman appointed under section 29-18, a conservation  
422 officer or special conservation officer appointed by the Commissioner  
423 of Energy and Environmental Protection under the provisions of  
424 section 26-5, an employee of the Department of Correction or a person  
425 providing services on behalf of said department when such employee  
426 or person is acting within the scope of such employee's or person's  
427 employment or duties in a correctional institution or facility and the  
428 actor is confined in such institution or facility, or any firefighter, while  
429 such victim was acting within the scope of such victim's duties; (2)  
430 murder committed by a defendant who is hired to commit the same for  
431 pecuniary gain or murder committed by one who is hired by the  
432 defendant to commit the same for pecuniary gain; (3) murder  
433 committed by one who has previously been convicted of intentional  
434 murder or of murder committed in the course of commission of a  
435 felony; (4) murder committed by one who was, at the time of  
436 commission of the murder, under sentence of life imprisonment; (5)  
437 murder by a kidnapper of a kidnapped person during the course of the  
438 kidnapping or before such person is able to return or be returned to  
439 safety; (6) murder committed in the course of the commission of sexual  
440 assault in the first degree; (7) murder of two or more persons at the  
441 same time or in the course of a single transaction; or (8) murder of a  
442 person under sixteen years of age.

443 Sec. 8. Section 53a-54d of the general statutes is repealed and the  
444 following is substituted in lieu thereof (*Effective October 1, 2015, and*  
445 *applicable to any person convicted prior to, on or after said date*):

446 A person is guilty of murder when, acting either alone or with one

447 or more persons, he commits arson and, in the course of such arson,  
448 causes the death of a person. Notwithstanding any other provision of  
449 the general statutes, any person convicted of murder under this section  
450 who was eighteen years of age or older at the time of the offense shall  
451 be punished by life imprisonment and shall not be eligible for parole.

452 Sec. 9. Subsection (c) of section 53a-54a of the general statutes is  
453 repealed and the following is substituted in lieu thereof (*Effective*  
454 *October 1, 2015, and applicable to any person convicted prior to, on or after*  
455 *said date*):

456 (c) Murder is punishable as a class A felony in accordance with  
457 subdivision (2) of section 53a-35a unless it is (1) a capital felony  
458 committed prior to April 25, 2012, by a person who was eighteen years  
459 of age or older at the time of the offense, punishable in accordance  
460 with subparagraph (A) of subdivision (1) of section 53a-35a, (2) murder  
461 with special circumstances committed on or after April 25, 2012, by a  
462 person who was eighteen years of age or older at the time of the  
463 offense, punishable as a class A felony in accordance with  
464 subparagraph (B) of subdivision (1) of section 53a-35a, or (3) murder  
465 under section 53a-54d, as amended by this act, committed by a person  
466 who was eighteen years of age or older at the time of the offense.

467 Sec. 10. (*Effective October 1, 2015*) The Connecticut Sentencing  
468 Commission established pursuant to section 54-300 of the general  
469 statutes shall study how victims may be notified of the parole  
470 eligibility laws and any other release mechanisms governing cases  
471 where a person is convicted of one or more crimes and receives a  
472 definite sentence or total effective sentence of more than two years for  
473 such crime or crimes. The commission shall report such study,  
474 including recommendations for legislation, if any, to the joint standing  
475 committee of the General Assembly having cognizance of matters  
476 relating to the judiciary not later than February 1, 2016.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>October 1, 2015</i>	54-125a
Sec. 2	<i>October 1, 2015</i>	New section
Sec. 3	<i>October 1, 2015</i>	46b-127(c)
Sec. 4	<i>October 1, 2015</i>	46b-133c(f)
Sec. 5	<i>October 1, 2015</i>	46b-133d(f)
Sec. 6	<i>October 1, 2015, and applicable to any person convicted prior to, on or after said date</i>	53a-46a
Sec. 7	<i>October 1, 2015, and applicable to any person convicted prior to, on or after said date</i>	53a-54b
Sec. 8	<i>October 1, 2015, and applicable to any person convicted prior to, on or after said date</i>	53a-54d
Sec. 9	<i>October 1, 2015, and applicable to any person convicted prior to, on or after said date</i>	53a-54a(c)
Sec. 10	<i>October 1, 2015</i>	New section



The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

### **OFA Fiscal Note**

#### **State Impact:**

Agency Affected	Fund-Effect	FY 16 \$	FY 17 \$
Correction, Dept.	GF - Potential Savings	See Below	See Below

Note: GF=General Fund

#### **Municipal Impact:** None

#### **Explanation**

Expanding parole eligibility for inmates convicted for a crime committed when they were under the age of 18 and sentenced to more than 10 years in prison may result in savings to the Department of Correction. To the extent that more inmates are granted parole, the agency will shift costs from incarceration to supervision in the community. On average, it saves approximately \$30,000 per inmate annually to supervise an inmate under parole instead of incarcerating them. There are currently approximately 350 inmates who fit the criteria of this bill.

In addition, the bill requires a parole hearing for inmates who meet the eligibility requirement, and a counsel to be appointed by the Office of the Chief Public Defender for indigent clients. It is anticipated that the Public Defender Services will be able to comply with this provision without additional resources and does not result in a fiscal impact.

This bill requires the court to consider certain factors when sentencing a juvenile and the Judicial Department Court Support Services Division (CSSD) to create reference materials on adolescent psychology and brain development to assist courts at sentencing. It is anticipated that CSSD can do so with current resources and does not

result in a fiscal impact.

Retroactively eliminating life sentences without parole for juveniles for specific offenses are anticipated to result in a minimal savings to the Department of Correction because there are few current inmates to whom the change applies and future offenders will receive shorter sentences.

Senate "A" makes several technical changes that do not result in a fiscal impact. In addition, the amendment narrows the circumstances in which the court must consider certain factors during sentencing. The amendment also requires the court to indicate the maximum length of incarceration for youthful offenders in certain circumstances. This is not anticipated to result in a fiscal impact as the Judicial Branch and the Department of Correction can collaborate to calculate the information. Finally, the amendment requires the CT Sentencing Commission to study methods of victim notification of parole eligibility and report findings to the General Assembly, which does not result in a fiscal impact.

House "A" makes changes to the factors the court must consider when sentencing a minor as an adult and does not result in a fiscal impact.

### ***The Out Years***

The annualized ongoing fiscal impact identified above would continue into the future subject to inflation.

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**OLR Bill Analysis****SB 796 (as amended by House "A" and Senate "A")\******AN ACT CONCERNING LENGTHY SENTENCES FOR CRIMES COMMITTED BY A CHILD OR YOUTH AND THE SENTENCING OF A CHILD OR YOUTH CONVICTED OF CERTAIN FELONY OFFENSES.*****SUMMARY:**

This bill makes a number of changes related to sentencing and parole release of offenders who were under 18 at the time they committed crimes, including:

1. retroactively eliminating (a) life sentences for capital felony and arson murder and (b) convictions for murder with special circumstances;
2. establishing alternative parole eligibility rules that can make someone eligible for parole sooner if he or she was sentenced to more than 10 years in prison;
3. requiring criminal courts, when sentencing someone convicted of a class A or B felony committed when he or she was between ages 14 and 18, to (a) consider certain mitigating factors of youth and (b) indicate the maximum prison term that may apply and whether the person may be eligible for release under the bill's alternative parole eligibility rules; and
4. prohibiting a child convicted of a class A or B felony from waiving a presentence investigation or report and requiring the report to address the same sentencing factors the bill requires a criminal court to consider.

The bill requires the Sentencing Commission to study how to notify

victims of the parole eligibility laws and release mechanisms available to people sentenced to more than two years in prison. The commission must report on its study and any recommendations to the Judiciary Committee by February 1, 2016.

The bill also makes technical and conforming changes (§§ 3-5).

\*Senate Amendment "A" eliminates application of the sentencing considerations to cases involving class C felonies, eliminates a requirement for court approval before a child convicted of a class C felony can waive a presentence investigation or report, requires courts to state the maximum sentence a juvenile convicted of a class A or B felony may serve and whether he or she may be eligible for release under the bill's parole rules, adds the provision on the Sentencing Commission study, and makes technical changes.

\*House Amendment "A" changes the sentencing factors a court must consider when sentencing someone who committed a class A or B felony when under age 18 by (1) retaining the requirement to consider scientific and psychological evidence of the difference between a child's and adult's brain development, (2) requiring consideration of the defendant's age at the time of the offense and the hallmarks of adolescence and (3) eliminating specific requirements to consider a child's lack of maturity, underdeveloped sense of responsibility, vulnerability to negative influences and pressures, increased capacity for change, and reduced competency to appreciate the consequences of actions and negotiate the criminal justice system.

EFFECTIVE DATE: October 1, 2015, and the provisions regarding capital felony, murder with special circumstances, and arson murder apply regardless of when an offender is or was convicted.

## **§§ 6-9 — SENTENCES FOR OFFENDERS UNDER AGE 18**

By law, capital felony punishes only those crimes committed before April 25, 2012. Under current law, juveniles can be sentenced to life imprisonment without possibility of release for committing a capital

felony and adults to either death or life imprisonment without possibility of release. The bill prohibits sentencing someone for a capital felony if he or she was under 18 when the crime was committed and overturns prior sentences of this type.

The bill prohibits convicting someone of murder with special circumstances unless the offender was at least 18 at the time of the offense. It overturns any prior convictions of this crime for offenders who were under 18 at the time of the crime. By law and unchanged by the bill, this crime is punishable by life imprisonment without the possibility of release.

The bill lowers the penalty for arson murder when the offender is under 18 from life imprisonment, statutorily defined as 60 years without parole, to 25 to 60 years. It applies this change retroactively to decrease the prison sentence of offenders who committed this crime when under 18 who have already been convicted.

The bill also makes conforming changes.

## **§ 2 — CONSIDERATIONS AT SENTENCING**

The bill requires a criminal court to consider certain factors when sentencing someone convicted of a class A or B felony committed when he or she was between ages 14 and 18. In addition to other relevant information, the bill requires the court to consider the defendant's age at the time of the offense, the hallmark features of adolescence, and scientific and psychological evidence showing the difference between a child's and adult's brain development.

If the court proposes a lengthy sentence under which it is likely the defendant will die in prison, the bill requires the court to consider how evidence of the difference between a child's and adult's brain development counsels against such a sentence.

The bill requires the Judicial Branch's Court Support Services Division to compile reference material on adolescent psychology and brain development to help courts sentence children.

## § 1 — PAROLE ELIGIBILITY

Under existing law, someone is generally eligible for parole after serving (1) 50% of his or her sentence minus any risk reduction credits earned if convicted of a nonviolent crime and (2) 85% of his or her sentence if convicted of a violent crime, home invasion, or 2<sup>nd</sup> degree burglary. Someone convicted of the following crimes is ineligible for parole: murder, capital felony, murder with special circumstances, felony murder, arson murder, or 1<sup>st</sup> degree aggravated sexual assault.

The bill establishes alternative parole eligibility rules that can make someone eligible for parole sooner if he or she (1) commits a crime when he or she is under 18 and (2) is sentenced to more than 10 years in prison. The eligibility rules do not apply to any portion of a sentence imposed for a crime committed when the person was 18 or older. Existing parole eligibility rules apply to such a sentence.

The rules apply if they make someone eligible for parole sooner than under existing law and they also apply to someone convicted of a crime who would otherwise be ineligible for parole. Under these rules, someone sentenced to:

1. up to 50 years in prison is eligible for parole after serving the greater of 12 years or 60% of his or her sentence or
2. more than 50 years in prison is eligible for parole after serving 30 years.

The bill applies to offenders incarcerated on and after October 1, 2015 regardless of when the crime was committed or the offender sentenced.

### ***Required Hearing***

The bill requires (1) a parole hearing when someone becomes parole-eligible under the bill's provisions and (2) the board to notify, at least 12 months before the hearing, the Chief Public Defender's Office, appropriate state's attorney, Department of Correction's (DOC) Victim Services Unit, Office of Victim Advocate, and Judicial Branch's Office

of Victim Services. The Chief Public Defender's Office must provide counsel for an indigent person.

At the hearing, the bill requires the board to allow:

1. the inmate to make a statement;
2. the inmate's counsel and state's attorney to submit reports and documents; and
3. any victim of the person's crime to make a statement, as with other parole hearings.

The board may also request (1) testimony from mental health professionals and relevant witnesses and (2) reports from the DOC or others. The board must use validated risk and needs assessment tools and risk-based structured decision making and release criteria. (Existing law requires the board's chairman to adopt policies on these topics.)

### ***Release Decisions***

After the hearing, the bill allows the board to release someone on parole if:

1. the release (a) holds the offender accountable to the community without compromising public safety; (b) reflects the offense's seriousness and makes the sentence proportional to the harm to victims and the community; (c) uses the most appropriate sanctions available, including prison, community punishment, and supervision; (d) could reduce criminal activity, impose just punishment, and provide the offender with meaningful and effective rehabilitation and reintegration; and (e) is fair and promotes respect for the law;
2. it appears from all available information, including DOC reports, that (a) there is a reasonable probability the offender will not violate the law again and (b) the benefits of release to the

offender and society substantially outweigh the benefits from continued confinement; and

3. it appears from all available information, including DOC reports, that the offender is substantially rehabilitated, considering his or her character, background, and history, including (a) the offender's prison record, age, and circumstances at the time of committing the crime; (b) whether he or she has shown remorse and increased maturity since committing the crime; (c) his or her contributions to others' welfare through service; (d) his or her efforts to overcome substance abuse, addiction, trauma, lack of education, or obstacles he or she faced as a child or youth in prison; (e) the opportunities for rehabilitation in prison; and (f) the overall degree of his or her rehabilitation considering the nature and circumstances of the crime.

The bill requires the board to articulate reasons for its decision on the record. If the board denies parole, the bill allows the board to reassess the person's suitability for a hearing at a later time determined by the board but no sooner than two years after the board's denial.

The bill specifies that the board's decisions under these provisions are not appealable.

## **BACKGROUND**

### ***Related Cases—U.S. Supreme Court***

In *Graham v. Florida*, the U.S. Supreme Court ruled that the Eighth Amendment's prohibition against cruel and unusual punishment prohibits states from sentencing defendants under 18 to life without parole for non-homicide crimes. The Court stated that there must be "some meaningful opportunity" for release based on a defendant's demonstrated maturity and rehabilitation. The Court stated that the Eighth Amendment does not prohibit a juvenile who commits a non-homicide crime from being kept in prison for life but it prohibits making the judgment "at the outset that those offenders never will be fit to re-enter society" (130 S.Ct. 2011 (2010)).



In *Miller v. Alabama*, the U.S. Supreme Court held that the Eighth Amendment prohibits courts from automatically imposing life without parole sentences on offenders who committed homicides while they were juveniles (under 18). The Court did not categorically bar life without parole sentences for juveniles but stated that a court must “take into account how children are different, and how those differences counsel against irrevocably sentencing them to a lifetime in prison” (132 S.Ct. 2455 (2012)).

### **Related Cases—Connecticut Supreme Court**

In *State v. Riley*, the Connecticut Supreme Court considered how the U.S. Supreme Court’s rulings applied to someone convicted of committing homicide and non-homicide crimes while a juvenile. The juvenile in this case received a cumulative 100-year prison sentence. The court ruled that even when a court has discretion in sentencing as it did in this case, *Miller* requires consideration of the juvenile’s youth as mitigation before sentencing the juvenile to the functional equivalent of a life sentence without the possibility of release. Because the sentencing court did not consider the factors of youth, the court ordered a new sentencing hearing.

In deference to the legislature and because the new sentence the defendant would receive was uncertain, the court did not consider whether the U.S. Supreme Court’s decision in *Graham* would require an opportunity for release when a juvenile is sentenced to the functional equivalent of life in prison (315 Conn. 637 (2015)).

In *Casiano v. Commissioner of Correction*, the Connecticut Supreme Court ruled that *Miller*’s requirements to consider certain factors of youth at sentencing apply (1) retroactively to juvenile offenders seeking collateral review of sentences imposed before the U.S. Supreme Court issued its ruling in *Miller* and (2) to a juvenile who received a total effective sentence of 50 years in prison without eligibility for parole (SC 19345, May 26, 2015).

### **Cases in Juvenile Court and Superior Court**

By law, juvenile courts have jurisdiction to hear criminal cases of offenders under age 18. Depending on the circumstances, offenders alleged to have committed felonies when they were between ages 14 and 18 may be transferred to the adult Superior Court criminal docket.

### ***Felony Classifications***

The law classifies felonies as A, B, C, D, or E and establishes penalties for each classification. There are also unclassified felonies that have different penalties. Table 1 displays the penalties for felony classifications.

**Table 1: Penalties for Felony Classifications**

<b><i>Felony</i></b>	<b><i>Prison Term</i></b>	<b><i>Maximum Fine</i></b>
Class A felony of murder with special circumstances	Life without the possibility of release	\$20,000
Class A felony of murder	25 to 60 years	\$20,000
Class A felony of aggravated sexual assault of a minor	25 to 50 years	\$20,000
Class A felony	10 to 25 years	\$20,000
Class B felony of 1st degree manslaughter with a firearm	Five to 40 years	\$15,000
Class B felony	One to 20 years	\$15,000
Class C felony	One to 10 years	\$10,000
Class D felony	Up to 5 years	\$5,000
Class E felony	Up to 3 years	\$3,500

### ***Capital Felony and Murder with Special Circumstances***

By law, a person committed a capital felony, before April 25, 2012, or commits murder with special circumstances, after that date, under the same circumstances. A person is guilty of one of these crimes when he or she murders:

1. certain officers while performing their duties, such as a police officer, state marshal, special conservation officer, or DOC employee;
2. for pay or hires someone to murder;
3. after a previous conviction for intentional murder or murder

- while a felony was committed;
4. while sentenced to life imprisonment;
  5. someone that he or she kidnapped;
  6. while committing 1<sup>st</sup> degree sexual assault;
  7. two or more people at the same time or in the course of a single transaction; or
  8. a person under age 16.

### ***Presentence Investigation Report***

The law requires a presentence investigation for anyone convicted of a felony for the first time in Connecticut. The court may request it for any crime or offense other than a capital felony or murder with special circumstances (the judge does not have discretion when imposing a sentence for these crimes as he or she does with most crimes). Probation officers prepare the report, which includes information on the circumstances of the offense; the victim's attitude; and the defendant's criminal record, social history, and present condition.

### ***Related Bill***

HB 6926, File 681, favorably reported by the Judiciary Committee, contains many of the same provisions. HB 6926 also (1) requires sentencing judges to state a defendant's maximum prison sentence, earliest parole eligibility date, and the number of credits he or she may earn to reduce the sentence; (2) requires prosecutors to include maximum prison sentence and parole eligibility information when describing plea agreements to victims; and (3) prohibits someone convicted of 1<sup>st</sup> degree manslaughter or 1<sup>st</sup> degree manslaughter with a firearm from earning risk reduction credits.

### **COMMITTEE ACTION**

Judiciary Committee

Joint Favorable

Yea    27    Nay   14    (03/27/2015)